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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 58**

**[Doc. No. AMS-DA-10-0002]**

**Increase in Fees for Voluntary Federal Dairy Grading and Inspection Services**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed Rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is proposing to increase the fees for voluntary Federal dairy grading and inspection services. The fee increases proposed are 15 percent during fiscal year (FY) 2013 and 5 percent during FY 2014. These fees were last adjusted in 2006. Dairy grading and inspection services are voluntary and are financed in their entirety through user fees assessed to participants using the program. Despite the adoption of technologies that have improved services, additional changes in operations that enhanced efficiencies, and reduced employee numbers, increases in salaries, technology investments, and general inflation have more than offset savings resulting in the need to increase fees. AMS estimates the proposed fee increase will result in an overall cost increase to the industry of less than \$0.0004 per pound of dairy product graded. This increase is needed to avoid a reduction in the services offered that aid the dairy industry in effectively marketing their products.

**DATES:** Comments must be received on or before: **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

**ADDRESSES:** Interested persons are invited to submit comments for public viewing

using the electronic process available at the Federal eRulemaking portal:

<http://www.regulations.gov>. Reference should be made to the title of the action and docket number, AMS-DA-10-0002, and note the date and page number of this issue of the Federal Register. Written comments may also be submitted to Diane Lewis, Director, Grading and Standards Division, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0225, Room 2968 – South, 1400 Independence Avenue, SW, Washington, DC 20250-0225. Comments may be faxed to (202) 690-3410. All comments received will be available for public inspection at: <http://www.regulations.gov>

**FOR FURTHER INFORMATION CONTACT:** Diane Lewis, Director, Grading and Standards Division, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0225, Room 2968 – South, 1400 Independence Avenue, SW, Washington, DC 20250-0225, or call (202) 720-4392.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Orders 12866 and 12988**

This rule has been determined to be “not significant” for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not retroactive. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

##### **Regulatory Flexibility Act and Paperwork Reduction Act**

Pursuant to the requirement set forth in the Regulatory Flexibility Act, AMS has considered the economic impact of this action on small entities. It has been determined

that its provisions would not have a significant economic effect on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy products manufacturer is a “small business” if it has fewer than 500 employees. If a plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Under the Agricultural Marketing Act of 1946, the Dairy Grading and Inspection Branch, AMS, provides voluntary Federal inspection and dairy product grading services to about 360 plants. An estimated 345 of these users are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201).

This proposed rule will raise the fees charged to businesses for voluntary plant inspections, grading services for dairy and related products. This proposal will affect all businesses that use these services equally. Dairy processing plants participating in the voluntary plant inspection program have their facility inspected against established USDA “General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service” construction and sanitation requirements. Businesses are under no obligation to use these voluntary user-fee based services and any decision on their part to discontinue the use of the services would not prevent them from marketing their products. It is estimated that the proposed fee increases will result in an increase to plants of \$0.0004 per pound of graded product. Therefore, AMS has determined that this proposed rule will not have a significant economic impact on small businesses.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that this rule would

have no impact on reporting, recordkeeping, or other compliance requirements for entities currently using voluntary Federal dairy inspection and grading services because they would remain identical to the current requirements.

This action does not request additional information collection that requires clearance by OMB. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is small. Requiring the same information from all participating dairy plants does not significantly disadvantage any plant that is smaller than the industry average.

### **Description of Program**

Plants participating in the voluntary AMS Dairy Grading and Inspection Program process milk into dairy foods that enter commerce as retail products, ingredients for further processing, purchases for Federal food assistance programs, or exports to other countries. Services provided by the program enhance the marketability and add value to dairy and dairy-containing foods. Dairy products manufactured in facilities complying with the USDA inspection requirements are eligible to be graded against official quality standards and specifications established by AMS and certain contract provisions between buyer and seller. Dairy products tested and graded by AMS have certificates issued describing the product's quality and condition.

AMS continually reviews cost structures to assure it is operating efficiently while maintaining the resources necessary to meet the dairy industry's demand for services. Periodically, fees must be adjusted to ensure that the program remains financially self-

supporting. The AMS Dairy Grading and Inspection Program has made great efforts to reduce the costs associated with providing grading and inspection services since the last fee increase in 2006 (71 FR 60805). Cost-saving initiatives to date have resulted in substantial gains in the efficiency of service delivery. In 2006, total costs for the program were \$5.2 million to grade and certify 1.5 billion pounds of dairy products—a per pound cost of \$0.0035. In 2011, the program’s total costs were \$5.3 million to grade and certify 2.0 billion pounds of dairy products—a per pound cost of product certified of \$0.0026, a 25 percent improvement in efficiency. Further enhancements will continue to improve the efficiency, quality and timeliness of providing inspection and grading services.

In an effort to minimize the costs associated with managing its workforce, the Dairy Grading and Inspection Program has restructured. The number of administrative personnel has been reduced from 14 full time employees to 5 resulting in annual savings of over \$400,000. The National Field Office, located in the suburbs of Chicago, co-located with other USDA offices in Lisle, Illinois, saving about \$32,000 annually. One supervisor and one training position were eliminated allowing about \$170,000 to be redirected to cover cost increases for additional grading staff needed to provide requested services. In addition, incorporation of system automation has resulted in faster customer service with less staff involvement, especially in the delivery of export certificates. Advances in electronic submissions and deliveries allowed nearly 20,000 export certificates to be issued with only 2.0 staff positions during FY 2011.

Although significant effort has been directed at reducing expenses, savings from these efforts have not offset increasing operating expenses incurred over the past 6 years.

Consequently, existing fee rates are no longer adequate to cover current obligations. The program is depleting reserve funds at a rate that jeopardizes its ability to ensure effective delivery of services to meet industry needs. Given these trends, services will have to be significantly reduced if revenue is not increased. Fees must be adjusted to cover current and projected operating costs. Without a fee increase, AMS anticipates that it will have to reduce Federal Dairy Grading and Inspection Services in 2013.

### **Proposed Action**

The Secretary of Agriculture is authorized by the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, et seq.), to provide voluntary Federal dairy inspection and grading services to facilitate the orderly marketing of dairy products and to enable consumers to obtain the quality of dairy products they desire. The AMA also provides for the collection of reasonable fees from users of the Federal dairy inspection and grading services to cover the cost of providing these services. The hourly fees are established by distributing the program's projected operating costs over the estimated service-revenue hours provided to users. AMS continually reviews its cost structure to assure it is operating efficiently while maintaining the resources necessary to meet the dairy industry's demand for services. Periodically, fees must be adjusted to ensure that the program remains financially self-supporting.

As part of its financially self-supporting status, agency requirements necessitate that the program maintain a reserve trust fund with a minimum of 4 months of operating funds to account for program closure or an unexpected decrease in revenues. Since revenues have not covered program costs for several years, the trust fund has gradually been depleted. The fund first dipped below its mandated 4-month reserve level in FY

2010. Fiscal year 2012 revenue was \$5.190 million with operating expenses at \$5.333 million, resulting in an end of year trust fund balance of \$83,000 or 0.2 months of operating reserve. Similar financial performance in FY 2013 will create a deficit of \$198,000. Without a fee increase, the AMS Dairy Grading and Inspection Branch will be put in an unstable financial position that will adversely affect the ability to provide dairy inspection and grading services.

In an effort to reduce costs and delay depletion of reserve funds, AMS has continued to automate its business practices, consolidate facilities, limit personnel, and implement other efficiencies. As detailed earlier, progress to date for the AMS Dairy Grading and Inspection Program has been significant and has resulted in decreasing costs per pound of graded product from \$0.0035 to \$0.0026. This is equivalent to a savings of approximately \$816,000 on every one billion pounds of product graded. Further enhancements in automated business practices will continue to improve the efficiency and timeliness of providing inspection and grading services as well as information to users of these services.

In view of the above considerations, AMS proposes to increase the hourly fees associated with Federal dairy grading and inspection services. This proposed rule includes a two-part incremental fee increase consisting of 15 percent beginning in February 2013 and an additional 5 percent in October 2013. Currently the fees are \$63.00 per hour for continuous resident services and \$68.00 per hour for non-resident services. The proposed increases result in fees of \$72.00 per hour for continuous resident services effective February 2013 and \$76.00 per hour effective October 2013. The proposed fee for non-resident services between the hours of 6 a.m. and 6 p.m. would be

\$78.00 per hour beginning February 2013 and \$82.00 per hour as of October 2013. The fee for non-resident services between the hours of 6 p.m. and 6 a.m. would be \$85.80 per hour effective February 2013 and \$90.20 as of October 2013. For services performed in excess of 8 hours per day and for services performed on Saturday, Sunday, and legal holidays, 1½ times the base fees would apply and result in increases to \$108.00 per hour for resident grading beginning February 2013 and \$114.00 per hour effective October 2013. Similarly, a fee of \$117.00 per hour for non-resident grading services effective February 2013 and \$123.00 as of October 2013 would also apply. The following table summarizes the proposed fee changes:

<b>Service (All rates in dollars per hour)</b>	<b>Current</b>	<b>February 2013</b>	<b>October 2013</b>
Continuous resident services	\$63.00	\$72.00	\$76.00
Non-resident services	\$68.00	\$78.00	\$82.00
Non-resident services 6pm—6am (10percent night differential)	\$74.80	\$85.80	\$90.20
Continuous resident services—in excess of 8 hours (1½ x base)	\$94.50	\$108.00	\$114.00
Non-resident—in excess of 8 hours	\$102.00	\$117.00	\$123.00

AMS estimates that dairy grading and inspection fees including the proposed increases will generate the following revenue (in thousands of dollars): FY 2013 (\$5,618); FY 2014 (\$6,199); FY 2015 (\$6,254); and FY 2016 (\$6,296). Program costs are estimated as follows (in thousands of dollars): FY 2013 (\$5,522); FY 2014 (\$5,517); FY 2015 (\$5,583); FY 2016 (\$5,800). The additional cost to the industry will represent less than \$0.0004 per pound of product certified. Even at this increased rate, program analysis estimate that trust fund reserves will not reach its required minimum level before



FY 2016. Trust fund reserves are estimated as follows (in thousands of dollars): FY 2013 (\$113); FY 2014 (\$795); FY 2015 (\$1,466); FY 2016 (\$1,961).

### **List of Subjects in 7 CFR Part 58**

Dairy Products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reason set forth in the preamble, 7 CFR part 58 is proposed to be amended as follows:

### **PART 58 -- GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS**

1. The authority citation for 7 CFR part 58 continues to read as follows:

**Authority:** 7 U.S.C. 1621-1627.

2. Section 58.43 is revised to read as follows:

#### **§58.43 Fees for inspection, grading, and sampling.**

Except as otherwise provided in §§58.38 through 58.46 and through the last day of September 2013 inclusive, charges shall be made for inspection, grading, and sampling service at the hourly rate of \$78.00 for services performed between 6:00 a.m. and 6:00 p.m. and at \$85.80 for services performed between 6:00 p.m. and 6:00 a.m. for service performed for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. Following the last day of September 2013, the hourly rate will be equal to \$82.00 for service performed between 6:00 a.m. and 6:00 p.m. and \$90.20 for services performed between 6:00 p.m. and 6:00 a.m. calculated in the same manner. A minimum charge of

one-half hour shall be made for service pursuant to each request or certificate issued.

Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

3. Section 58.45 is revised to read as follows:

**§58.45 Fees for continuous resident services.**

Irrespective of the fees and charges provided in §§58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of \$72.00 per hour for services performed during the assigned tour of duty until the last day of September 2013. Following the last day of September 2013, the hourly rate shall be assessed at \$76.00 for services calculated in the same manner. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Dated: January 14, 2013

David R. Shipman  
Administrator  
Agricultural Marketing Service

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